IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.338 OF 2005
IN
SUIT NO.1471 OF 1996

Mrs.Vineeta Dadlani ...Plaintiff
Nee Ms.Bhagwanti Jethmal
Vs.
Mrs. Rekha J. Budhrani & Ors. ...Defendant

Ms.Rubia Taneja i/b.Jhangiani Narula for Plaintiff
Mr. Amin Khesada i/b. M/s. Advani Associates for Defendants 1 to 3
Mr. Basant Trilokhani for Defendants 4 & 5

CORAM: SMT. ROSHAN DALVI, J.
DATED: 3RD MARCH, 2006

P.C.

1. This is a partition suit. The plaintiff, the husband of defendant no.1, defendant no.4 and defendant no.5 are brothers and sisters. The plaintiff has sued for partition of the properties of her late mother.

2. There are 4 properties in this suit. One of the suit properties is premises No.501, Dalamal House, Nariman Point, Mumbai-400 021.

3. The Court Receiver was appointed as receiver in respect of all the properties including the aforesaid property. The Receiver was appointed initially without the power of sale.

4. The property stands in the names of husband of defendant no.1, defendant no.5 and the mother of the

plaintiff. The plaintiff shares equally with her brothers and sisters from her mother's share. The plaintiff is therefore, entitled to 1/4th of 1/3rd share in that property. Defendant no.4 is similarly entitled. Defendant No.5 is entitled to his separate 1/3rd share as well as 1/4th of 1/3rd share by his mother. Defendants 1,2 and 3, as the heirs of the husband of defendant no.1, are also entitled to their 1/3rd share plus 1/4th of the 1/3rd share of the mother of the husband of defendant no.1.

5. There was a private bid conducted by the Court Receiver. None of the parties opted to be the agent of the Court Receiver. No outsiders have bid to take over the property also. This property is therefore lying vacant and without any royalty.

6. The Society's charges are shown to be Rs.22,91,633/-as on 4th February 2005. I am told that the Society's charges till date are about Rs.26 Lakhs. The Society's outgoings which are required to be paid with interest at the rate of 18% p.a. to the Society as per the rules of the Society.

7. The relationship between the parties is admitted. The title of the property is also admitted. Consequently the shares of the parties are admitted. Since the property has been unable generate any income from outsiders or amongst the parties who would take

over the property as the agent of the Court Receiver and make payment of all the arrears of the Society and the accruing expenses including the outgoings of the Society, the only course upon is to allow the Court Receiver to sell the property so that all the parties can be paid off to the extent of their respective admitted shares.

8. The sale would enure for the benefit of all the parties to the suit. The plaintiff as well as defendants 4 & 5 are agreeable to sell the suit premises. Only defendants 1,2 and 3 who claim 1/3rd share in the suit property upon its purchase and another 1/4th share of the mother of the husband of defendant no.1 are not agreeable to sell the property. They are also not agreeable to take over the agency and pay the royalty and incur outgoings of the Society. The denial for the sale is self-destructive and counter-productive.

9. In these circumstances the only course which open to the advantage of all the parties to the suit is the sale of premises.

10. The market value would be determined upon the bids received by the Court Receiver. From the ready reckoner properties close to the area where the suit property is situated, it being the office premises, is shown to be able to fetch approximately Rs.12000/- per

sq. ft. carpet area. The property is stated to be 1400 sq. ft. carpet area, it would approximately fetch Rs.1.68 Crores.

11. The accrued outgoings are already Rs.26 lakhs. Further expenses would continue to be incurred until the actual sale, which must be taken into account. Hence, the following order.

O R D E R

(i). The Court Receiver shall allow all the parties to the suit as well as the outsiders to bid for the sale of the property being the office premises at 501, Dalamal House, Nariman Point, Mumbai-400 041.

(ii). The reserve price is fixed at Rs.1.38 Crores.

(iii). The Court Receiver shall file his report upon the offers being received.

(iv). The defendants 4 and 5 have also applied for expedition of the suit. The relationship between the parties is admitted. The properties left by the deceased mother of the parties is also admitted. A preliminary decree in the partition suit is therefore the next step followed by division of the properties by metes and bounds or as mutually agreed upon by and between them. The suit is accordingly expedited.

(v). The Court Receiver has filed his report for the payment of the arrears of the Society. No party has applied to or is willing to pay up the arrears. Hence, the sale of the property has been ordered. In view thereof the Court Receiver’s report does not survive.

(ROSHAN DALVI,J.)